

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD BEERS,)	
Petitioner,)	
)	
vs.)	Civil Action No. 06-306
)	
FRANK D. GILLIS,)	
Respondent.)	

ORDER

Petitioner, Ronald Beers, has filed a motion pursuant to Federal Rule of Civil Procedure 60(b)(6), seeking relief from the June 5, 2006 dismissal of his petition for a writ of *habeas corpus* (ECF No. 8) and the subsequent denial of a certificate of appealability by the United States Court of Appeal for the Third Circuit on December 6, 2006 (ECF No. 13).

On April 7, 2016, Magistrate Judge Mitchell filed a Report and Recommendation (“R&R”) (ECF No. 17), which recommended that the Rule 60(b)(6) motion be dismissed and that a certificate of appealability be denied. On April 26, 2016, Petitioner filed objections (ECF No. 18) to the R&R.

In his objections, Petitioner contends that the R&R erred in stating that *Miller v. Alabama*, 132 S.Ct. 2455 (2012), was inapplicable to him because he was over the age of eighteen at the time his crime was committed. Rather, he contends that the Supreme Court’s holding in *Miller* arbitrarily denies equal protection of the law to offenders aged eighteen to twenty-one at the time of the commission of their crimes. The Supreme Court of the United States is the only Court which has the authority to expand the rule in the manner Petitioner would like. Therefore, this argument is rejected.

In addition, Petitioner contends that he “is currently seeking to re-open *Beers v. Gilmore*, 3d Cir. No. 15-1110, not *Beers v. Gillis*, 2:06-cv-00306.” (ECF No. 18 at 3). However, it was Petitioner who filed the Rule 60(b)(6) motion in this Court, specifically referencing his “petition under 28 U.S.C. § 2254.” To the extent that he wishes to re-open a case in the Court of Appeals for the Third Circuit, he can seek leave from that Court to do so. He may address this issue in his appeal of this order.

AND NOW, this 27th day of April, 2016,

IT IS ORDERED that the Motion to Re-Open Petitioner’s Petition Under 28 U.S.C. § 2254 in Accordance with Federal Rules of Civil Procedure 60(b)(6) Seeking Benefit of Intervening Change in Controlling Law (ECF No. 15) is dismissed and, because reasonable jurists could not conclude that a basis for appeal exists, a certificate of appealability is denied. The Report and Recommendation of Magistrate Judge Mitchell (ECF No. 17) is adopted as the opinion of the Court, as supplemented herein.

IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure if the Petitioner desires to appeal from this Order he must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3, Fed. R. App. P.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: ECF registered counsel of record
and
Ronald Beers
EK-6510
S.C.I. Greene
175 Progress Drive
Waynesburg, PA 15370